

**REMARKS**

**Summary of the Advisory Action**

In an Advisory Action dated June 21, 2005 the Examiner maintained her rejections of claims 1 and 17 in view of *Seacord* and *Suszynski*.

**Summary of the Response to the Office Action**

Applicants have amended independent claims 1, 17, 18 and 19 and rewritten claim 7 into independent form. Accordingly, claims 1, 2, 4-10 and 12-19 remain pending for further consideration.

**Summary of Telephone Call with the Examiner Following Receipt of Advisory Action**

The undersigned wishes to thank the Examiner for the courtesies extended during the telephone calls on August 8-9, 2005 in regards to the advisory action. The undersigned indicated that claims 1 and 17 were amended in response to the final office action as this would place them in condition for allowance over the art of record, as previously agreed upon. Specifically, claims 1 and 17 were amended by replacing, at line 1, "A protective cap" with "A disposable protective cap" at line 1. These amendments were entered to make it clear that the claimed cap is a disposable cap and that this cap, unlike the prior art, includes at least one air chamber to improve heat insulation.

In reply, the Examiner indicated that amending, for example, claim 1 at line 1 from "A protective cap" to "A disposable protective cap" does not affect the scope of the claim. Thus,

apparently the Examiner does not believe that this amendment limits the scope of the claims. It was then suggested that if claim 1 were amended to read “a base body of the disposable protective cap includes . . .” then the claim scope would be limited to a disposable protective cap.

The undersigned does not agree with the Examiner’s reading of the law regarding preambles of claims. Nevertheless, since the claim scope is the same regardless of whether line 1 or line 6 is amended, Applicants enter the Examiner’s suggested amendment.

Applicants understand that by amending claim 1 and 17 to read, in part, “a base body of the disposable protective cap includes . . .” the Examiner will remove all pending rejections based on *Seacord* and/or *Suszynski* and that entry of these amendments do not change the scope of the claims prior to these amendments. Additionally, should a second advisory action issue, the advisory action shall state that the rejections to *Seacord* and *Suszynski* are withdrawn.

Applicants also understand that it is unclear whether the claims will be allowable after the entry of these amendments, because the Examiner will need to perform an updated search of the art.

The updated search might reveal additional prior art, which in the opinion of the Examiner might render the claims in their current amended form unpatentable.

### **Response to the Office Action**

Applicants traverse the rejections of claims 1 and 17 based on U.S. Pat. No. 5,167,235 (*Seacord*) for the following reasons. *Seacord* discloses an ear thermometer that has a non-insulating cap or cover. Referring to FIGS. 1C and 2 of *Seacord*, the disclosed device has a disposable sheath 16 that is made from a material that is devoid of a heat insulating

characteristic. *See e.g.*, Col. 5, ll. 49-66. Although *Seacord* provides insulating material 34 (FIG. 1), this insulating material is not part of a disposable sheath as claimed. Accordingly, Applicants respectfully ask that the rejections based on *Seacord*, either under 35 U.S.C. §102 or 35 U.S.C. §103, be withdrawn and claims 1 and 17 found allowable over the art of record.

U.S. Pat. No. 5,018,872 (*Suszynski*) discloses a probe of an ear thermometer; however, this reference does not teach a disposable cap that includes a heat insulating element. Rather, *Suszynski* teaches a disposable protective probe cover 41 that is described as a film made of thin, stretchable low density polyethylene. *See e.g.*, col. 4, ll. 44-62. Applicants claim a disposable cap having at least one air chamber to improve heat insulation, a feature that is not taught or suggested by *Suszynski*. Accordingly, Applicants respectfully ask that the rejections based on *Suszynski*, either under 35 U.S.C. §102 or 35 U.S.C. §103, be withdrawn and claim 17 found allowable over the art of record.

Claims 2-6, 9-16 and 18-19, which depend from allowable claims 1 and 17, respectively, recite additional features that further distinguish Applicants' invention from the prior art. For either of these reasons, Applicants respectfully ask that the rejections to these claims be withdrawn and the claims allowed.

#### **Claim 7 was rewritten into Independent Form**

Claim 7 stands objected to as being dependant on a rejected base claim. Applicants have rewritten claim 7 into independent form, including all limitations of the base claims. Allowance of claims 7 and 8 is requested.

**CONCLUSION**

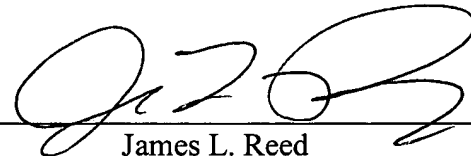
In view of the foregoing, Applicants respectfully request entry of the amendments to place the application in clear condition for allowance or, in the alternative, in better form for appeal. Should the Examiner feel that there are any issues outstanding after consideration of this response, the Examiner is invited to contact Applicants' undersigned representative at 202-739-5772.

If there are any other fees due in connection with the filing of this response, please charge the fees to our Deposit Account No. 50-0310. If a fee is required for an extension of time under 37 C.F.R. 1.136 not accounted for above, such an extension is requested and the fee should also be charged to our Deposit Account.

Respectfully submitted,

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By: \_\_\_\_\_



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